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**Subject: State Aid SA.47912 (2017/NN) – Spain
Environmental incentive for coal-fired power plants**

Sir,

The Commission wishes to inform Spain that, having examined the information supplied by your authorities on the measure referred to above, it has decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union.

1. PROCEDURE

- (1) Following its sector inquiry on capacity mechanisms,¹ by letter dated 4 April 2017 the Commission informed the Spanish authorities of the opening of an ex-officio investigation into Spain's so-called "environmental incentive".
- (2) The Commission services met with the Spanish authorities on 11 May 2017, after which the Spanish authorities provided information to the Commission on 29 May 2017. The Commission services met again with the Spanish authorities on 8 and 15 June 2017. They asked further questions in writing by letter dated 21 June 2017, to which the Spanish authorities replied on 28 June 2017. The measure was then further discussed during meetings on 29 June, 18 July and 14 September 2017.

¹ COM(2016) 752 final. Final Report of the Sector Inquiry on Capacity Mechanisms.

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2. DESCRIPTION OF THE MEASURE

2.1. The environmental incentive

- (3) In 2007, the Spanish authorities considered that price signals were not sufficient to ensure the security of supply in the long term and reasoned that the provision of electric power in the Spanish system was to be considered a "public good" and should be eligible for receiving payments ensuring the equilibrium between offer and demand in the medium and long term.²
- (4) In this context, on 28 December 2007 they introduced the so-called "environmental incentive" by means of Order ITC/3860/2007, which entered into force on 1 January 2008.³ Pursuant to this Order, investments in desulphurisation filters carried out by existing coal power plants could be subsidised as a way to support the long term availability of these plants in the Spanish electricity market.
- (5) In terms of eligibility, power plants which were using coal as their main fuel could participate if they fulfilled all of the following conditions:
 - (a) Being included in the National Plan on the Reduction of Emissions from Existing Big Combustion Plants ("PNRE-GIC"), approved by the Council of Ministers on 7 December 2007;⁴
 - (b) Being included in the so-called "emissions bubble", as defined by the PNRE-GIC. The emissions bubble included all large combustion plants in operation in Spain in the year 2000 with the following exceptions: installations no longer in operation as of 1 January 2008, installations taking appropriate measures to ensure that emissions would comply with the requirements applicable to new plants and installations committing not to operate for more than 20 000 operational hours starting from 1 January 2008 and ending no later than 31 December 2015;
 - (c) Having made investments in desulphurisation plants whenever the execution project was approved before the date of entry into force of Order ITC/3860/2007 (1 October 2007) or its approval has been requested at most three months before this date.
- (6) According to Order ITC/3860/2007 if the conditions above were met, beneficiaries have the right to receive EUR 8,750 MW/year during 10 years. The right to receive the payments is automatic if the conditions are met. Payments are made from the date of commissioning of the subsidised desulphurisation plants. Power plants having commissioned the desulphurisation plants before the date of entry into force of Order ITC/2794/2007 are entitled to receive aid for ten years from the commissioning date of the desulphurisation plant.

² Order ITC/2794/2007 of 27 September 2007, Annex III, available at: <https://www.boe.es/buscar/doc.php?id=BOE-A-2007-17078>.

³ Order ITC/3860/2007 of 28 December 2007, available at: <https://www.boe.es/buscar/doc.php?id=BOE-A-2007-22458>.

⁴ <http://www.minetad.gob.es/energia/desarrollo/Medioambiente/Contaminantes/PNRE-GIC/Paginas/planReduccion.aspx>.

- (7) The scheme was amended on 17 November 2011 by means of Order ITC/3127/2011,⁵ which modified the eligibility criteria under Order ITC/3860/2007 by adding that installations having carried out environmental investments aimed at reducing the sulphur oxide emissions at the date of coming into force of Order ITC/3860/2007 (1 January 2008) were eligible for aid. This modification extended the scope of the measure for covering investments aimed at reducing SO₂ emissions in general, and not only investments in desulphurisation plants.
- (8) The scheme is closed to new beneficiaries; only installations having made investments in the past can receive aid. Payments corresponding to investments eligible under the relevant Orders continue to be made until the expiry of the corresponding 10 years period.

2.2. Beneficiaries

- (9) Recital (5) sets out in detail the eligibility requirements for beneficiaries. Table 1 provides the list of power plants which have benefited from aid under the environmental incentive.

Table 1. Installations having benefited from aid under the environmental incentive.

Code	Description	Maximum power [MW]	Rated thermal input [MWth]	Payments (2007 – 2016) [EUR]
ABO2	Aboño 2	535.8	1,401	41,872,184
BRR1	Barrios	570.0	1,420	37,969,609
CCO3	Compostilla 3	323.3	1,332	1,787,441
COM4	Compostilla II 4	341.1	1,675	19,977,131
COM5	Compostilla II 5	340.6		19,946,099
GUA2	Guardo 2	342.4	966	23,785,080
LAD4	Lada 4	347.7	940	21,025,718
LIT1	Litoral Almería 1	557.5	1,463	32,737,486
MEI1	Meirama	557.2	2,096	31,349,914
NRC3	Narcea 3	347.4	984	22,486,204
PGR1	Puentes García Rodríguez 1	350.9	3,800	23,016,865
PGR2	Puentes García Rodríguez 2	351.0		27,734,334
PGR3	Puentes García Rodríguez 3	350.2		28,048,983
PGR4	Puentes García Rodríguez 4	350.8		24,893,860
PNN3	Puerto Nuevo 3	299.7	976	14,986,466
ROB2	La Robla 2	355.1	1,003	24,117,242
SRI3	Soto de Ribera 3	346.2	830	25,739,095
TER1	Teruel 1	352.2	3,300	72,02,818
TER2	Teruel 2	352.1		7,200,368
TER3	Teruel 3	351.4		5,640,036
Total (2007 – 2016)				441,516,933

⁵ Order ITC/3127/2011 of 17 November 2011, available at: <https://www.boe.es/buscar/doc.php?id=BOE-A-2011-18064>.

- (10) The identity of the aid beneficiaries (i.e. of the owners of the plants described in Table 1) is presented in Table 2 below.

Table 2. List of beneficiaries

Company	Payments (2007 – 2016) [EUR]
Endesa Generación, S.A.	198,185,421
Gas Natural SDG, S.A.	74,145,381
Hidroeléctrica del Cantábrico, S.A.U.	67,611,279
Iberdrola Generación España, S. A.	15,121,406
Iberdrola Generación, S.A.U.	29,689,392
Unión Fenosa Generación S.A.	3,807,979
Viesgo Generación S.L.	52,956,075
Total (2007 – 2016)	441,516,933

- (11) Annual payments per power plant and per beneficiary from the year 2007 until year 2016 are presented in Table 3.

Table 3. Annual payments [EUR] per power plant and per beneficiary (2007-2016)

Company / Payments [EUR]	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	Total
Endesa Generación, S.A.	4,983,424	17,973,305	20,270,598	21,742,304	23,122,127	20,809,921	23,122,127	23,122,127	22,987,543	20,051,945	198,185,421
CCO3	713,053	1,074,388			0	0	0	0	0	0	1,787,441
COM4	0			2,363,722	2,985,323	2,686,794	2,985,323	2,985,323	2,985,323	2,985,323	19,977,131
COM5	0			2,360,050	2,980,685	2,682,617	2,980,685	2,980,685	2,980,685	2,980,692	19,946,099
LIT1	0			3,956,030	4,878,213	4,390,393	4,878,213	4,878,213	4,878,213	4,878,211	32,737,486
PGR1	0		1,825,866	3,071,158	3,071,158	2,764,044	3,071,158	3,071,158	3,071,158	3,071,165	23,016,865
PGR2	395,543	3,071,778	3,071,773	3,071,773	3,071,773	2,764,597	3,071,773	3,071,773	3,071,773	3,071,778	27,734,334
PGR3	772,491	3,064,776	3,064,774	3,064,774	3,064,774	2,758,296	3,064,774	3,064,774	3,064,774	3,064,776	28,048,983
PGR4	773,859	3,070,199	3,070,201	3,070,201	3,070,201	2,763,180	3,070,201	3,070,201	2,935,617	0	24,893,860
TER1	776,857	3,082,098	3,082,096	261,767	0	0	0	0	0	0	7,202,818
TER2	776,593	3,081,048	3,081,049	261,678	0	0	0	0	0	0	7,200,368
TER3	775,028	1,529,018	3,074,839	261,151	0	0	0	0	0	0	5,640,036
Gas Natural SDG, S.A.	0	0	2,054,778	8,994,671	9,215,793	9,803,509	11,007,655	11,022,995	11,022,995	11,022,985	74,145,381
MEI1				2,847,179	4,745,298	4,270,770	4,860,163	4,875,503	4,875,503	4,875,498	31,349,914
NRC3			1,016,232	3,040,366	3,040,366	2,736,324	3,040,366	3,040,366	3,040,366	3,040,362	21,994,748
ROB2			1,038,546	3,107,126	1,430,129	2,796,415	3,107,126	3,107,126	3,107,126	3,107,125	20,800,719
Hidroeléctrica del Cantábrico, S.A.U.	141,308	6,493,430	7,718,548	7,718,548	7,718,548	6,946,703	7,718,548	7,718,548	7,718,548	7,718,550	67,611,279
ABO2	141,308	4,688,862	4,688,862	4,688,862	4,688,862	4,219,980	4,688,862	4,688,862	4,688,862	4,688,862	41,872,184
SRI3	0	1,804,568	3,029,686	3,029,686	3,029,686	2,726,723	3,029,686	3,029,686	3,029,686	3,029,688	25,739,095
Viesgo Generación, S.L.	0	0	3,655,317	5,596,885	6,410,770	6,849,754	7,610,837	7,610,837	7,610,837	7,610,838	52,956,075
BRR1			3,655,317	4,885,468	4,987,935	4,489,145	4,987,935	4,987,935	4,987,935	4,987,939	37,969,609
PNN3	0			711,417	1,422,835	2,360,609	2,622,902	2,622,902	2,622,902	2,622,899	14,986,466
Iberdrola Generación, S.A.U.	0	114,611	3,029,602	6,038,634	6,038,632	5,434,781	6,038,632	2,994,500			29,689,392
GUA2	0	114,611	2,996,261	2,996,261	2,996,261	2,696,640	2,996,261	1,485,817			16,282,112
LAD4	0		33,341	3,042,373	3,042,371	2,738,141	3,042,371	1,508,683			13,407,280
Iberdrola Generación España, S.A.U.								3,044,132	6,038,632	6,038,642	15,121,406
GUA2								1,510,444	2,996,261	2,996,263	7,502,968
LAD4								1,533,688	3,042,371	3,042,379	7,618,438
Unión Fenosa Generación, S.A.	0	1,247,943	2,560,036								3,807,979
NRC3	0		491,456								491,456
ROB2	0	1,247,943	2,068,580								3,316,523

2.3. Budget and expenditure

- (12) According to the Spanish authorities, there has been no fixed budget for the environmental incentive as its annual cost has depended to a large extent on the number of beneficiaries, which has varied over time. Spain submitted information on the payments made since 2007 and the budget estimation for the scheme until 2020.

Table 4. Annual payments under the environmental incentive

Year	Annual payments [EUR]
2007	5,124,732
2008	25,829,289
2009	39,288,879
2010	50,091,042
2011	52,505,870
2012	49,844,655
2013	55,494,811
2014	55,513,150
2015	55,378,566
2016	52,422,960
Total 2007-2016	441,516,933
2017 (estimation)	49,521,451
2018 (estimation)	38,441,738
2019 (estimation)	25,345,865
2020 (estimation)	6,059,756

2.4. Functioning and financing of the environmental incentive

- (13) Pursuant to Order ITC/3860/2007:
- (a) the system operator (Red Eléctrica de España – REE) is responsible for the settlement of the incentive to each of the owners of the installations benefiting from it;
 - (b) the environmental incentive is financed through contributions from all electricity traders and direct consumers in the electricity market in the Spanish market.
- (14) The cost charged to each contributor is a function of its electricity consumption and a "capacity unitary price", expressed in EUR/kWh, which is defined by Ministerial Order. The capacity unitary price was last modified by Order IET/2735/2015 of 17 December 2015.⁶

2.5. Emission limit values imposed on installations benefiting from aid

- (15) The emission limit values imposed on beneficiaries of the environmental incentive implement the legal requirements set out in Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 (Large Combustion Plants Directive, hereafter "2001 LCP Directive").^{7, 8}

⁶ Available at: <https://www.boe.es/buscar/doc.php?id=BOE-A-2015-13782>.

⁷ Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants (OJ L 309, 27.11.2001, p. 1).

- (16) Article 1 of the 2001 LCP Directive establishes that the Directive applies to combustion plants for which the rated thermal input is equal to or greater than 50 MW, irrespective of the type of fuel used (solid, liquid or gaseous).
- (17) Article 4 and Annex III of the 2001 LCP Directive establishes the emission limit values for the SO₂ emissions of the plants covered by the Directive:
- (a) For plants using solid fuels, the SO₂ emission limit values expressed in mg/Nm³ (O₂ content 6%) to be applied to new and existing plants with a rated input above 500 MWth is 400 mg/Nm³ (O₂ content 6%).
 - (b) For plants with a rated input above 500 MWth, where the emission limit values cannot be met due to the characteristics of the fuel, a desulphurisation rate of at least 94% applies or of at least 92% where a contract for the fitting of flue gas desulphurisation or lime injection equipment has been entered into, and work on its installation has started, before 1 January 2001.
- (18) Article 4 of the 2001 LCP Directive further establishes that Member States shall, by 1 January 2008 at the latest, achieve significant emission reductions by taking appropriate measures to ensure that all licences for the operation of existing plants comply with the emission limit values mentioned in recital (17) or ensuring that existing plants are subject to the national emission reduction plan.
- (19) Spain opted for the definition and implementation of a national emission reduction plan for existing plants. For that purpose, Spain developed the PNRE-GIC, which was approved by the Council of Ministers on 7 December 2007. As indicated in recital (3), only installations included in the "emission bubble" of this plan were eligible for aid under the environmental incentive.
- (20) For plants falling inside the scope of recital 17(a) above, the PNRE-GIC defined emission limit values for the SO₂ emissions. For plants falling under the scope of recital 17(b) above, the PNRE-GIC defined desulphurisation targets expressed in percentages. For each of the installations having received aid, the limit or target set by the PNRE-GIC is presented in Table 5.

⁸ The requirements set in the 2001 LCP Directive were strengthened by Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17). The requirements set by the industrial emissions Directive came into force on 1 January 2016.

Table 5. Emission limit values and desulphurisation targets set by the PNREGIC.

Code	SO ₂ [mg/Nm ³]	Desulphurisation target
ABO2	484	-
BRR1	400	-
CCO3	400	-
COM4	400	-
COM5	400	-
GUA2	400	-
LAD4	400	-
LIT1	400	-
MEI1	400	-
NRC3	400	-
PGR1	-	94%
PGR2	-	94%
PGR3	-	94%
PGR4	-	94%
PNN3	400	-
ROB2	400	-
SRI3	400	-
TER1	-	92%
TER2	-	92%
TER3	-	92%

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid within the meaning of Article 107(1) of the TFEU

- (21) A measure constitutes State aid in the meaning of Article 107 (1) TFEU if it is "granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods [...] in so far as it affects trade between Member States".
- (22) Accordingly, the qualification of a measure as State aid requires the following conditions to be met cumulatively: a) the measure must be financed through State resources and be imputable to the State; b) it must grant an advantage liable to favour certain undertakings or the production of certain goods; c) the measure must distort or threaten to distort competition and d) the measure must have the potential to affect trade between Member States.

3.1.1. Existence of State resources and imputability

- (23) The Commission notes that in order for a measure to be imputable to the State and financed from State resources, the Court of Justice has held that it is not necessary to establish that there has been a transfer of money from the State budget or from a public entity.⁹ This has been confirmed in the *Vent de Colère* judgment¹⁰, where the Court held that a mechanism, developed by the State, for offsetting in full the additional costs imposed on undertakings because of an

⁹ *Doux Elevage*, EU:C:2013:348, paragraph 34, *France v Commission*, EU:T:2012:496, paragraph 36; Judgment in *Bouygues Telecom v Commission*, C-399/10 P et C-401/10 P, EU:C:2013:175, paragraph 100; *Vent de Colère*, C-262/12, EU:C:2013:851, paragraph 19.

¹⁰ *Vent de Colère*, EU:C:2013:851.

obligation to purchase wind-generated electricity at a price higher than the market price, by passing on those costs to all final consumers of electricity in the national territory, constitutes an intervention through State resources. In other words, the Court found State resources where funds for a measure were financed through compulsory contributions imposed by domestic legislation and managed or allocated in accordance with the provisions of that legislation.

- (24) Similarly, the General Court confirmed that the German renewables support scheme 'EEG' involved State resources even though the support for renewables did not come from the general budget of the State but from the EEG surcharge paid eventually by the final consumers without passing through the State budget and thus not involving any burden on the general budget.¹¹ The General Court considered that for State resources to be involved it is sufficient that the TSOs had been designated by the State to manage the system of aid for the production of EEG electricity and that the obligation on the TSOs that additional payments be made to producers of EEG electricity was compensated by means of the funds generated by the EEG surcharge, administered by the TSOs and allocated exclusively to finance the support and compensation schemes set up by the EEG 2012.
- (25) The scheme at hand is similar to those assessed in the above Court rulings. First, the State defined its method of financing in a ministerial order.¹² The order provides that the costs of the measure should be passed on to electricity suppliers and direct consumers in the market through a levy on electricity consumption. Second, the Commission notes that, since the TSO is mandated to distribute the funds to beneficiaries as well as to collect them by law, the financial flows are constantly under the control of the State even if they take place between private parties, i.e. the beneficiaries and the network users with the TSO as intermediary entrusted by the State to administer the funds.
- (26) The Commission therefore concludes on a preliminary basis that the measure is financed through State resources and that it is imputable to the State.

3.1.2. *Existence of a selective advantage*

- (27) An advantage, within the meaning of Article 107(1) TFEU, is any economic benefit which an undertaking would not have obtained under normal market conditions, that is to say in the absence of State intervention. The advantage is selective if it is only granted to certain undertakings or categories of undertakings or to certain economic sectors.
- (28) Since the scheme is exclusively open to power plants using coal as their main fuel and included in the PNRE-GIC, the measure appears to be selective.
- (29) The power plants receive compensation for specific investment costs, which they would not receive under normal market conditions. The Commission's preliminary view is therefore that the measure confers an advantage on its beneficiaries.

¹¹ Judgment in *Germany v Commission ("EEG 2012")*, Case T-47/15, ECLI:EU:T:2016:281, paragraphs 81- 128.

¹² Order ITC/3860/2007, 6th additional provision.

3.1.3. Distortion of competition and effect on trade

- (30) The Spanish electricity market is liberalised and open to market players from other Member States. The beneficiaries are active in the electricity market, competing among themselves and with other electricity producers which are not eligible for aid under the scheme (e.g. renewable electricity generators, nuclear power plants and gas-fired power plants). The total generation capacity having received aid is 7.16 GW, representing approximately 6.8% of the total generation capacity in Spain. Moreover, electricity is widely traded between Member States (the interconnection capacity of Spain with its neighbours is above 5 GW). Therefore, the scheme at hand is likely to distort competition on the electricity market and affect trade between Member States.

3.1.4. Conclusion on the existence of State aid

- (31) In light of the above assessment, the Commission concludes on a preliminary basis that the measure constitutes State aid within the meaning of Article 107(1) TFEU.

3.2. Legality of the aid

- (32) The Commission notes that the measure was implemented in breach of the stand-still obligations laid down in Article 108(3) TFEU. Therefore, the Commission comes to the conclusion that, should the measure be found to be State aid within the meaning of Article 107(1) TFEU, it would constitute unlawful State aid.

3.3. Compatibility of the aid with the internal market

- (33) The prohibition on State aid is neither absolute nor unconditional. In particular, paragraphs 2 and 3 of Article 107 TFEU constitute legal bases allowing aid measures to be considered compatible with the internal market.
- (34) As indicated in recital (3), the Spanish authorities consider that the measure constitutes aid for generation adequacy, i.e. aid for ensuring that the level of generation capacity will be adequate to meet the demand levels in any given period. The Commission may declare aid for generation adequacy compatible with the internal market under Article 107(3)(c) TFEU. At present, compatibility conditions for such aid are set out in the Guidelines on State aid for environmental protection and energy 2014-2020 ("2014 Guidelines")¹³. Since prior Guidelines did not contain any specific provision regarding generation adequacy measures, the Commission will assess the present measure directly under Article 107(3)(c) TFEU.
- (35) The Commission doubts that the measure at hand would comply with the substantive criteria required to declare a generation adequacy measure compatible with the internal market. The Commission comes to the preliminary conclusion that the measure did not pursue an objective of common interest as the need to specifically and exclusively subsidise the beneficiaries of the measure to generally ensure Spain's security of supply has not been demonstrated. The need for State intervention, incentive effect, appropriateness and proportionality of the measure were also not justified as Spain did not demonstrate that the necessary

¹³ OJ C 200, 28.6.2014, p. 1-55.

investments would not have taken place in the absence of aid. In addition, when the measure was introduced it was not open and did not provide incentives to future generators or to operators using substitutable technologies (as it was limited to thermal power plants using coal as their main fuel); in consequence, undue negative effects on competition and trade were introduced.

- (36) In addition, the Commission doubts that the scheme at hand should be assessed as a generation adequacy measure. Considering that the granting of aid under the present scheme was conditional upon the SO₂ emission reductions enabled by the subsidised investments, the environmental incentive rather appears to constitute State aid for environmental protection, i.e. aid which aims at remedying or preventing damage to physical surroundings or natural resources by a beneficiary's own activities. When it comes to State aid for environmental protection, Article 107(3)(c) TFEU may also be used as a basis for compatibility, provided that the aid complies with the criteria established by the Commission in its relevant Guidelines. As set out in points 248 and 249 of the 2014 Guidelines, in the case of unlawful aid the Commission applies the Guidelines which were in force at the time of granting of the aid.
- (37) Aid is considered to have been granted when all the conditions under Order/3860/2007 were met. As indicated in recitals (5) and (7), this occurred when investments in equipment reducing SO₂ emissions were made or when the approval of the project for the installation of such equipment was granted or requested. As indicated in recital (6), payments started when the equipment was commissioned, or on 1 January 2008 in case the equipment had been commissioned before this date.
- (38) Therefore, for installations which were granted aid between 1 January and 31 March 2008, the Commission assesses the compatibility on the basis of the 2001 Community guidelines on State aid for environmental protection ("2001 Guidelines").¹⁴ On 1 April 2008, new Guidelines entered into force: the 2008 Community guidelines on State aid for environmental protection ("2008 Guidelines").¹⁵ Aid granted as from 1 April 2008 is therefore assessed on the basis of these Guidelines. The 2008 Guidelines were replaced by the 2014 Guidelines, which apply as of 1 July 2014. Nevertheless, it appears from the information submitted by the Spanish authorities that no aid was granted as of 1 July 2014.

3.3.1. Compatibility of aid granted between 1 January and 31 March 2008

- (39) According to the 2001 Guidelines, investment aid for complying with mandatory Community standards may be declared compatible with the internal market only in two particular instances: (i) as a transitional investment aid to help small and medium-sized enterprises ('SMEs') adapt to new Community standards, or (ii) to achieve levels of protection which are higher than those required by Community standards.
- (40) To assess the compatibility of aid granted under the environmental incentive, it is therefore necessary to ascertain (i) whether the scheme targeted SMEs, or (ii)

¹⁴ OJ C 37, 3.2.2001, p. 3-15.

¹⁵ OJ L 82, 1.4.2008, p. 1-33.

whether the aid enabled its beneficiaries to go beyond the then applicable Community standards.

- (41) The scheme is not limited to SMEs. SMEs are defined in the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises¹⁶ as enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet not exceeding EUR 43 million. Based on the information available presently to the Commission, it appears that none of the beneficiaries listed in Table 2 qualified as an SME at the time of granting.
- (42) As regards the second point, the Commission recalls that, as of 1 January 2008, the applicable Community standards in terms of SO₂ emissions for coal-fired plants larger than 50 MW were those defined in the 2001 LCP Directive. It appears from recitals (14) to (19) that the environmental incentive was introduced as a way to ease the financial burden imposed on Spanish coal-fired plants by the emission reduction plan, which Spain had to devise to comply with the 2001 LCP Directive. This emission reduction plan did not go beyond the objectives set out in the 2001 LCP Directive. Against this background, the Commission has no indication at this stage that beneficiaries of aid under the environmental incentive were incentivised to go further than the then applicable Community standards defined in the 2001 LCP Directive.
- (43) Therefore, at this stage the Commission doubts that aid granted under the environmental incentive between 1 January and 31 March 2008 could be declared compatible on the basis of the 2001 Guidelines. Should the Spanish authorities disagree with this preliminary finding, they are invited to substantiate why and on which legal basis this aid could be declared compatible, be it under the 2001 Guidelines or any other compatibility basis.

3.3.2. Compatibility of aid granted between 1 April 2008 and 30 June 2014

- (44) As shown in Table 3, payments to some beneficiaries for some installations started only after 1 April 2008, in consequence, compatibility against the 2008 Guidelines has been analysed.
- (45) According to the 2008 Guidelines, investment aid for environmental protection may be declared compatible with the Single Market in three particular instances:
 - (a) to achieve a higher level of environmental protection or to increase the environmental protection in the absence of Community standards;
 - (b) to lessen the burden on the most affected undertakings when Member States adopt national environmental regulations that are stricter than Community standards and or
 - (c) for the early adaptation to future Community standards.
- (46) As indicated in recital (39), it appears that the environmental incentive was introduced as a way to ease the financial burden imposed on Spanish coal-fired

¹⁶ OJ L 124, 20.5.2003, p 36.

plants by the emission reduction plan, which Spain devised to comply with the 2001 LCP Directive. As a result, the measure does not appear to comply with the condition of the 2008 Guidelines.

- (47) The emission limit values set by Spain in its emission reduction plan, as set out in recital (19), were not more stringent than the emission limit values set by the 2001 LCP Directive, as set out in recital (16). As a result, the measure does not appear to comply with the condition of the 2008 Guidelines because there is a relevant Community standard to which the national standard corresponds.
- (48) While the requirements under the 2001 LCP Directive came into force on 1 January 2008, as indicated in recital (4), Spain introduced the environmental incentive on 28 December 2007. As a result, the measure does not appear to comply with the condition of the 2008 Guidelines relating to the early adaptation to future Community standards.
- (49) Therefore, at this stage the Commission doubts that aid granted under the environmental incentive after 1 April 2008 could be declared compatible on the basis of the 2008 Guidelines. Should the Spanish authorities disagree with this preliminary finding, they are invited to substantiate why and on which legal basis this aid could be declared compatible, be it under the 2008 Guidelines or any other compatibility basis.

4. CONCLUSION

- (50) At this stage, the Commission comes to the preliminary conclusion that the measure constitutes State aid and it doubts whether the measure is compatible with the internal market. More specifically, it appears that the measure constitutes aid for investments merely to bring the coal-fired power plants in line with Community environmental standards.
- (51) In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) TFEU, requests Spain to submit its comments and to provide all such information as may help to assess the measure, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to potential recipients of the aid immediately.
- (52) The Commission wishes to remind Spain that Article 108(3) TFEU has suspensory effect, and would draw your attention to Article 16 of Council Regulation (EC) No 2015/1589 of 13 July 2015¹⁷, which provides that all unlawful aid may be recovered from the recipient.
- (53) The Commission warns Spain that it will inform interested parties by publishing this letter and a meaningful summary of it in the Official Journal of the European Union. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the Official Journal of the European Union and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.

¹⁷ Council Regulation (EC) No 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the TFEU (OJ L 248, 24.9.2015, p. 9).

If this letter contains confidential information which should not be published, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to publication of the full text of this letter. Your request specifying the relevant information should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Greffe
B-1409 Brussels
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Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission